

REMARKS

Claims 22, 23, 27-29, 31, 36, 37 and 41-53 are pending in this application. By this Amendment, claims 19-21, 24-26, 30, 32-35 and 38-40 are canceled; claims 22, 23, 27, 29, 31 and 36 are amended; and claims 41-53 are added. Support for the amendments may be found in Figs. 3, 15 and 17, the corresponding portions of the specification, and the original claims. No new matter is added. Applicant respectfully requests reconsideration and prompt allowance of the pending claims at least in light of the following remarks.

I. The Specification Satisfies Formal Requirements

The Office Action objects the specification for informalities. Specifically, the Office Action alleges that "fist aspect," as recited on page 4, should be replaced with "first aspect." By this Amendment, the specification is amended accordingly.

Further, the Office Action alleges "A pair of holder seat 206 is," as recited on page 13, should be replaced with "A pair of holder seats 206 are." By this Amendment, the specification is amended to recite "A pair of holder seats 206 is." Because a "pair" is a singular entity, "is" should be maintained as the appropriate verb form. Accordingly, reconsideration and withdrawal of the objections are respectfully requested.

II. The Information Disclosure Statement is Proper

The Office Action alleges that the February 22, 2005 Information Disclosure Statements fails to include a concise statement of relevance in accordance with 37 C.F.R. §1.98(a)(3), specifically in reference to JP-62-125211. Applicant respectfully submits that the February 22 Information Disclosure Statements complies with the requirements of 37 C.F.R. §1.98(a)(3), because JP-62-125211 has been cited in an International Search Report, an English copy of which has been provided (see MPEP §609.04(a)(III)). Thus, no further action is required. Applicant respectfully requests consideration of JP 62-125211.

III. The Claims Satisfy Formal Requirements

The Office Action objects to claim 23 for informalities. Specifically, the Office Action alleges that "is rest on" should be replaced with "is rested on." By this Amendment, claim 23 is amended accordingly.

The Office Action objects to claim 33 for informalities. By this Amendment, claim 33 is canceled, rendering this objection moot.

IV. The Claims Satisfy the Requirements of §112, second paragraph

The Office Action alleges that "the plate type heater," as recited in claim 27, lacks antecedent basis. By this Amendment, claim 27 is amended to recite "the heater," which refers to "a heater," as recited earlier in claim 27. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

V. The Claims Define Patentable Subject Matter

The Office Action rejects claims 19 and 29 under 35 U.S.C. §102(b) over U.S. Patent No. 4,301,252 to Baker et al. (hereinafter "Baker"). By this Amendment, claim 19 is canceled, rendering the rejection of claim 19 moot.

Regarding claim 29, Baker fails to teach the claimed "displacing the container horizontally relative to the unit." The Office Action alleges that Baker teaches a means for varying the position of the specimen container. Specifically, the Office Action alleges, in paragraph 10b, that "Baker teaches fastening the incubator to a microscope stage's motion controls" and that the microscope stage's motion controls provide "back and forth" movement. However, Baker fails to teach motion controls such that a specimen container is movable relative to a heating unit of the apparatus. Baker merely teaches an incubator that is movable when placed on the stage of a microscope. Thus, Baker fails to teach all of the features of claim 29.

The Office Action rejects claims 20, 24 and 25 under 35 U.S.C. §103(a) over Baker in view of U.S. Patent No. 5,257,128 to Diller. By this Amendment, claims 20, 24 and 25 are canceled, rendering this rejection moot.

The Office Action rejects claims 21-23, 27, 28, 32, 33 and 37 under 35 U.S.C. §103(a) over Baker in view of U.S. Patent No. 4,629,862 to Kitagawa et al. (hereinafter "Kitagawa"). By this Amendment, claims 21, 32 and 33 are canceled, rendering the rejection of these claims moot.

Regarding claim 22, Baker fails to teach, alone or in combination with Kitagawa, the claimed "a top plate disposed above the upper plate with a space from the upper plate." The Office Action alleges, in paragraph 13e, that Baker teaches a "top plate" spaced above the top surface of the inner culture container. However, a "top plate," as recited in claim 22, pertains to an element of "the heater," which heats the culture container "from the bottom thereof." Thus, the claimed "top plate" cannot be considered to be disposed above the culture container. Further, in applying Baker to claim 19 (the subject matter of which now incorporated into claim 22), the Office Action alleges that the cover plate 25, as taught by Baker, relates to "a lid." Because the Office Action previously considered cover plate 25 to correspond to the claimed "lid," with respect to claim 19, the Office Action's allegation that the cover plate 25 of Baker relates to a "top plate," as recited in claim 22, creates an inconsistency. Thus, "a space from the upper plate" cannot refer to the space between a top surface of a culture container and cover plate 25 as alleged by the Office Action.

Regarding claim 27, Baker, alone or in combination with Kitagawa, fails to teach "wherein the unit is adapted to be placed on the upper surface of the stage of the microscope so as not to contact with the heater with a spacing defined therebetween." The Office Action appears to have erroneously alleged "the unit" to correspond to a culture container. On the contrary, as claim 27 incorporates the subject matter of canceled claim 19, "the unit" refers to

the claimed "upwardly water tank unit," and not a culture container. Thus, the Office Action fails to allege that Baker teaches "the unit is adapted to be placed on the upper surface of the stage of the microscope so as not to contact with the plate type heater with a spacing defined therebetween." Baker merely teaches that an annular channel 14 (alleged water tank), as shown in Fig. 3, is integral with the base platform 11. Thus, Baker teaches no spacing between the annular channel 14 and the thermal heater 39.

The Office Action rejects claim 26 under 35 U.S.C. §103(a) over Baker in view of U.S. Patent No. 5,552,321 to Focht. By this Amendment, claim 26 is canceled, rendering this rejection moot.

The Office Action rejects claim 30 under 35 U.S.C. §103(a) over Baker in view of U.S. Patent No. 5,192,506 to Kureshy et al. (hereinafter "Kureshy"). By this Amendment, claim 30 is canceled, rendering this rejection moot.

The Office Action rejects claim 31 under 35 U.S.C. §103(a) over Baker in view of Kureshy and further in view of Focht. Applicant respectfully traverses this rejection.

Focht fails to teach "such that an upper surface of the heater . . . is flush with the upper surface of a portion of the stage of the microscope." Focht merely teaches a culture dish assembly to be inserted into a stage portion, as shown in Fig. 1. Further, the assembly does not appear to be flush with an upper surface of the stage of a microscope. Thus, Focht fails to teach a heater that fits into a fitting hole such that the upper surface of the heater is flush with the upper surface of a portion of the stage. Thus, Focht, alone or in combination with the other cited references, fails to teach all of the features of claim 31.

The Office Action variously rejects claims 34, 35, 38 and 39 under 35 U.S.C. §103(a). By this Amendment, claims 34, 35, 38 and 39 are canceled, rendering the rejections of these claims moot.

The Office Action rejects claim 36 under 35 U.S.C. 103(a) over Baker in view of U.S. Patent No. 5,241,415 to Argentieri et al. (hereinafter "Argentieri"). Applicant respectfully traverses the rejection.

Argentieri at least fails to disclose "the light ray transmitting portion of the lid closing the upper end of the unit has a heating portion comprising a laminate structure including a transparent conductive film layer disposed between transparent glass plates," as recited in claim 36. The Office Action alleges that heating element 50," as taught in Argentieri, corresponds to the claimed "lid." However, Argentieri merely teaches that the heating element 50 comprises a clear mylar film with an adhesive backing. Thus, Argentieri, alone or in combination with the other cited references, fails to teach a lid portion having a transparent conductive film disposed between transparent glass plates.

The Office Action rejects claim 40 under 35 U.S.C. §103(a) over Baker in view of Kureshy and further in view of U.S. Patent No. 6,056,342 to Chan. By this Amendment, claim 40 is canceled, rendering this rejection moot.

Thus, for at least these reasons, independent claims 22, 27, 29, 31 and 36 are patentable over the applied references. Further, claims 23, 28 and 37, which depend from claims 22 and 27, are also patentable over the applied references for at least the reasons discussed above, as well as for the additional features they recite. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

VI. New Claims

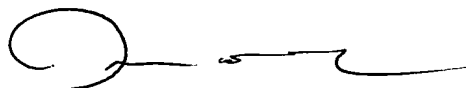
By this Amendment, claims 41-53 are added. Because claims 41-53 depend at least from claim 22, claims 41-53 are patentable for at least the reasons discussed above regarding claim 22, as well as for the additional features they recite. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

VII. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

Jesse D. Sukman
Registration No. 54,477

JAO:JDS/jnm

Attachment:

Petition for Extension of Time
Amendment Transmittal

Date: October 24, 2008

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

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